THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.14812 of 2006

14.8.2006

Between:

Tirumala China Venkata Ratnam, S/o.Tirumala Satyanarayana
… Petitioner

AND

The District Collector, West Godavari District at Eluru
And another
… Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.14812 of 2006

ORDER:

The petitioner is owner of land admeasuring Acs.4.36 cents in R.S.No.190 of Bethapudi Village. The District Collector issued notification under Section 4(1) of Land Acquisition Act, 1894 (the Act, for brevity) proposing to acquire an extent of Acs.3.73 cents in survey No.190 for public purpose, namely, provision of house sites to poor persons. Challenging the same, the present writ petition is filed.

Learned Counsel for the petitioner submits that there was a proposal to acquire the land admeasuring Acs.2.32 cents in R.S.No.200/1 belonging to Saktheswara Swamy Devalayam, Yanamaduru, but the tenant of the land due to political clout got the proposal dropped. Thereupon, the second respondent sent proposals for acquiring the petitioner's land leading to the issue of the notification dated 30.6.2006 under Section 4(1) of the Act. Secondly, he would urge that there are Government poramboke lands in R.S.No.184 as well as land belonging to the temple in R.S.Nos.200/1, 192/1 & 2, 169 and 93/7. The respondent ignored this aspect of the matter and issued the notification, which is illegal and arbitrary.

The contention that the proposal to acquire temple land was dropped at the behest of the tenant of the land is an allegation which has not been substantiated. Even otherwise, the same cannot be material for the issue in question. Secondly, whether the Government land is available and whether such Government land is suitable is not

justiciable in a petition under Article 226 of Constitution of India. Indeed, the petitioner has not placed any material in proof of such allegation and on a mere unsubstantiated allegation this Court cannot go into these matters.

In **Janapareddy Venkateswara Rao v District Collector, Eluru**[1], this Court while considering a similar question as to whether the plea of alternative land can invalidate the notificationunder Section 4(1) of the Act, held as under.

> The land is acquired for the purpose of providing house sites by the State Government. The writ petitioner has set out in the affidavit certain extents of land belonging to the S.T.V.N.High School and also Smt.Kilambi Seethalakshmi wife of Ramavataram. I do not think it necessary to dilate onthis contention. It is well settled by the decisions of this Court in W.P.No.2923 of 1999, dated 16.02.1999 and W.A.No.223 of 1999, dated 25.02.1999, that suitability of a land is not a justiciable issue unless in a given case it is shown that the choice of the land by the State and its authorities is tainted by factual *mala fide* or is done wantonly by the State authorities under the garb of exercise of eminent domain power. That is not the pleading nor the proof in the instant case.

The writ petition is devoid of any merit and is accordingly dismissed.

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(**V.V.S.RAO, J**)

August 14, 2006.

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[1] 1999(3) ALD 42